
(1917) 07 MAD CK 0026
In the Madras High Court

Chivikula Venkatasubbiah and Another	APPELLANT
Vs	
Gollapudi Venkateswarulu	RESPONDENT

Date of Decision : 16-07-1917

Acts Referred:

Limitation Act, 1908 — Section 7

Citation : AIR 1918 Mad 85 : 44 Ind. Cas. 566

Hon'ble Judges : Bakewell, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. As regards the question whether Section 7 of the Limitation Act of 1908 has the effect of barring the application for execution, Execution Petition No. 1042 of 1912, the preponderance of authority is clearly in favour of the affirmative view. The question whether a major manager of a joint Hindu family can give a valid discharge of a decree-debt within the meaning of the above section so as to make the time run against the minor members of the family is fully discussed in Duraisawmi Sastrial v. Venkatarama Iyer (1911) 2 M.W.N. 420 where it was held that the dictum of Bashyam Aiyangar, J. in Periasami v. Krishna Ayyan 12 M.L.J. 166 could no longer be said to be good law having regard to the change of language in Section 7 of the new Limitation Act. The same view is enunciated by Sadasiva Aiyar and Spencer, JJ. in Planandi Pillai v. Papathi Ammal 22 Ind. Cas. 76 : (1914) M.W.N. 159 and one of us followed Duraisawmi Sastrial v. Venkatarama Iyer 12 Ind. Cas. 503 : (1911) 2 M.W.N. 420 in Ramnadhan Sivayya v. Udatha Atchayya 18 Ind. Cas. 723: No doubt in Mahomed Silar Sahib v. Nabi Khan 35 Ind. Cas. 157 Old-field and Sadasiva Aiyar, JJ. seem to approve of Bashyam Aiyangar's observation in Periasami v. Krishna Ayyan 12 M.L.J. 166 but this decision may perhaps be distinguished on the ground that no question of limitation directly arose in that case. However that may be, we think that since there is express mention of applications for execution of decrees in Section 7, there is no longer room for the contention that it has no application to cases where under the Hindu Law the manager can give a valid discharge simply because the liability to be enforced arises under a decree.

2. Another point was raised before us in second appeal, viz., that the attachment of the judgment-debtor's decree by order dated 15th April 1908 continued in spite of the dismissal of the petition on the 25th April 1908. But whether the dismissal of an execution petition has not the effect of removing the attachment depends upon the facts of each case, as observed in *Raghavachariar v. Anantha Reddi* 31 Ind. Cas. 911. The District Munsif points out that there was nothing to show that the petition was not dismissed in the presence of parties and the decree-holder himself has treated the attachment as having ceased to exist. In the lower Appellate Court the question does not appear to have been argued and in second appeal we are not under the circumstances forced to hold that the view of the District Munsif on this point is wrong.

3. The appeal is dismissed with costs.